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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WASTEWATER RATES AND CHARGES
FOR UTILITY SERVICE BASED
THEREON.

DOCKET NO: SW-01428A-09-0103

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

DOCKET NO: W-01427A-09-0104

IN THE MATTER OF THE APPLICATION
OF LITCHFIELD PARK SERVICE
COMPANY, AN ARIZONA
CORPORATION, FOR AUTHORITY (1) TO
ISSUE EVIDENCE OF INDEBTEDNESS IN
AN AMOUNT NOT TO EXCEED \$1,755,000
IN CONNECTION WITH (A) THE
CONSTRUCTION OF TWO RECHARGE
WELL INFRASTRUCTURE
IMPROVEMENTS AND (2) TO
ENCUMBER ITS REAL PROPERTY AND
PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

DOCKET NO. W-01427A-09-0116

Arizona Corporation Commission
DOCKETED

AUG 9 2011

DOCKETED BY

1 IN THE MATTER OF THE APPLICATION
2 OF LITCHFIELD PARK SERVICE
3 COMPANY, AN ARIZONA
4 CORPORATION, FOR AUTHORITY (1) TO
5 ISSUE EVIDENCE OF INDEBTEDNESS IN
6 AN AMOUNT NOT TO EXCEED \$1,170,000
7 IN CONNECTION WITH (A) THE
8 CONSTRUCTION OF ONE 200 KW ROOF
9 MOUNTED SOLAR GENERATOR
10 INFRASTRUCTURE IMPROVEMENTS
11 AND (2) TO ENCUMBER ITS REAL
12 PROPERTY AND PLANT AS SECURITY
13 FOR SUCH INDEBTEDNESS.

DOCKET NO. W-01427A-09-0120

11 **LITCHFIELD PARK SERVICE COMPANY**

12 **WRITTEN CLOSING ARGUMENT**

13 **Phase 2**

14 **August 9, 2011**

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TABLE OF CONTENTS

CLOSING ARGUMENT2

A. Phase-In Surcharge.....2

B. Approval of HUF Tariff.....3

PRAYER FOR RELIEF7

TABLE OF ABBREVIATIONS AND CONVENTIONS

Litchfield Park Service Company uses the following abbreviations in citing to the pre-filed testimony and hearing transcripts in this brief. Other documents that were admitted as exhibits during the hearing are cited by hearing exhibit number. Other citations to testimony and documents are provided in full, including (where applicable) the Corporation Commission's docket number and filing date.

LITCHFIELD PARK SERVICE COMPANY EXHIBITS

Pre-Filed Testimony	Hearing Exhibit	Abbreviation
Direct Testimony of Greg Sorensen, Phase 2	A-1	Sorensen Phase 2 Dt.
Rebuttal Testimony of Greg Sorensen, Phase 2	A-2	Sorensen Phase 2 Rb.
Excerpt of Hearing from Bella Vista Water Company, Inc., Consolidated Docket No. W-02465A-09-0411	A-3	

PEBBLE CREEK EXHIBITS

Direct Testimony of Steven Soriano	P-1	Soriano Phase 2 Dt.
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WESTCOR EXHIBITS

Revised Direct Testimony of Garrett Newland	W-1	Newland Revised Dt.
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RUCO EXHIBITS

Direct Testimony of William A. Rigsby	R-1	Rigsby Phase 2 Dt.
Excerpt of Surrebuttal Testimony of Crystal Brown from Bella Vista Water Company, Inc., Consolidated Docket No. W-02465A-09-0411	R-2	
Staff's Response to Petition to Amend in Johnson Utilities LLC, Docket No. WS-02987A-08-0180	R-3	

STAFF EXHIBITS

Direct Testimony of Marlin Scott, Jr.	S-1	Scott Phase 2 Dt.
Direct Testimony of Jeffrey M. Michlik	S-2	Michlik Phase 2 Dt.
Agua Fria Water, Docket No. E-01032B-00-0205, Decision No. 63334 (February 2, 2001)	S-3	

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1 At hearing, Applicant Litchfield Park Service Company (LPSCO) agreed with
2 Judge Nodes that the parties' respective positions on the two narrow issues in the second
3 phase of this rate case are sufficiently clear.¹ But RUCO, the only party not in accord on
4 both issues, insisted on briefing. So, the Company provides this brief closing argument in
5 order to aid Judge Nodes and the Commission in issuing a final decision in this docket. In
6 this brief, LPSCO provides a short overview of the proposed surcharge to recover the
7 forgone revenue during the phase-in of rates approved in Phase 1 of this docket, which
8 surcharge is not in dispute. Then, the Company explains why its HUF proposal should be
9 adopted, despite RUCO's enthusiastic but ultimately self-interested defense, before setting
10 forth LPSCO's final prayer for relief in Phase 2 of this rate case.

11 LPSCO is Liberty Water's largest system, providing water and sewer service to
12 over 30,000 combined water and wastewater customers in a portion of the Phoenix metro
13 area's west valley. This docket was the first rate case for LPSCO since it was acquired by
14 Algonquin Water Resources of America, now Liberty Water. In the first phase of this rate
15 case, the Commission approved new rates for service, with increases of 63.8% (water) and
16 42.4% (sewer) from the previous rates set roughly more than a decade earlier. Phase 2 of
17 this rate case was limited to two issues—a mechanism for LPSCO to recover forgone
18 revenue and approval of a new HUF tariff. There were no disputes between the parties
19 over the first issue. The second issue was the subject of a singular area of disagreement.
20 Specifically, RUCO alone opposes the following sentence in LPSCO's proposed HUF
21 tariff: "The Company shall record amounts collected under the tariff as CIAC; however,

22
23
24 ¹ Tr. at 147:9-12. The key for abbreviations and citations to a witness' pre-filed testimony are set forth in
25 the Table of Abbreviations and Conventions in pages ii to iii above following the Table of Contents. The
26 table also lists the hearing exhibit numbers of the parties' pre-filed testimony. Other hearing exhibits are
cited by the hearing exhibit number and, where applicable, by page number, e.g., R-13 at 2. The transcript
of the hearings is cited by page number, e.g., Tr. at 1.

1 such amounts shall not be deducted from rate base until such amounts have been
2 expended for plant.”² This brief focuses primarily on this dispute with RUCO.

3 CLOSING ARGUMENT

4 A. Phase-In Surcharge

5 As noted, the rates approved in Phase 1 were subject to a Commission-imposed
6 phase-in, pursuant to which the new rates would be increased in three phases over one
7 year’s time. It has long been recognized, however, that phased-in rates, at a minimum,
8 require that the utility be made whole.³ Accordingly, the Commission also directed that
9 the parties determine, in Phase 2, a means for the Company to recover the forgone
10 revenue due to the phase-in ordered in Phase 1.⁴

11 In its Phase 2 direct filing, LPSCO proposed a simple surcharge of 10.98 percent
12 for water service and 8.46 percent for wastewater service.⁵ This percentage would be
13 multiplied against the monthly bill, meaning the larger the bill, the larger the surcharge. It
14 was assumed that the forgone revenue would be collected over 18 months from all
15 customers with a carrying charge of 7.72 percent accruing from December 1, 2010, the
16 day rates went into effect, and continuing through the end of the surcharge collection
17 period. The 7.72 percent is the weighted average cost of capital approved by the
18

19 ² Sorensen Phase 2 Dt., Attachment 2 at Section IV(B) and Attachment 3 at Section IV(B); *Bella Vista*
20 *Water Co., Inc.*, Decision No. 72251 (April 7, 2011) at 47:13-15.

21 ³ This follows from the holding in *Scates* wherein the court held “[T]he rates established by the
22 Commission should meet the overall operating costs of the utility and produce a reasonable rate of return.
23 It is equally clear that the rates cannot be considered just and reasonable if they fail to produce a
24 reasonable rate of return or if they produce revenue which exceeds a reasonable rate of return.” *Scates v.*
Ariz. Corp. Comm’n, 118 Ariz. at 534, 578 P.2d at 615 (App. 1978). Thus, at a minimum, if rates do not
25 provide for recovery of the revenue requirement, provision for recovery of the forgone revenue, plus
26 carrying costs must be made under *Scates*. LPSCO also believes that the Commission cannot lawfully
force the utility to accept a rate phase-in, as it did in this case, although that issue is not being litigated in
this Phase 2 proceeding.

⁴ Decision No. 72026 at 79:25-27.

⁵ Sorensen Phase 2 Dt. at 1:23-26.

1 Commission in Phase 1, meaning it is the Company's cost of money.⁶ LPSCO selected 18
2 months because a 2.5 year timeframe to be made whole for ACC-approved rate increases
3 is fair and reasonable given LPSCO's intent to follow a three-year rate case cycle.⁷

4 The Company knows exactly how much revenue it has forgone to date during the
5 phase-in because its billing system can generate that information at any time.⁸ Of course,
6 the total amount forgone during the entire phase-in period had to be estimated as the
7 phase-in is still underway. Likewise, the Company can't be certain exactly how long it
8 will actually take to recover the forgone revenue and carrying cost through the surcharge
9 as customer usage will vary with population and weather. Therefore, the Company's
10 proposal would reconcile the collection of the surcharge amounts with the total amount to
11 be collected after 12 months.⁹ If the amount to be collected is recovered faster than
12 18 months, the surcharge will terminate early. Conversely, if it takes more than 18
13 months, the surcharge will continue until the Company has recovered all of the revenue to
14 which the Company is entitled.¹⁰

15 Staff and RUCO both supported the Company's proposal without any change.¹¹

16 **B. Approval of HUF Tariff**

17 HUF tariffs allow utilities to equitably apportion the cost of constructing additional
18 off-site facilities to provide water production, delivery, storage and pressure, and
19

20 ⁶ Decision No. 72026 at 61:21; Sorensen Phase 2 Dt. at 2:20-21.

21 ⁷ Sorensen Phase 2 Dt. at 3:13-16.

22 ⁸ Through April 30, 2011, the shortfall was over \$1.1 million. In order to produce a figure for this
23 proceeding, the Company did have to estimate the total amount to be forgone. *Id.* at 2:14-17. As of the
time of the direct filing there were still roughly six months of the phase-in left.

24 ⁹ *Id.* at 3:3-4.

25 ¹⁰ *Id.* at 3:6-7. LPSCO also assumes that the surcharge may need to be adjusted downward the last month
or two to attempt to prevent any potential over-recovery. If any over-recovery does occur, the Company
has already agreed to refund that difference back to our customers. *Id.* at 3:9-10.

26 ¹¹ Michlik Phase 2 Dt. at 2:18-21; Rigsby Phase 2 Dt. at 4:14 – 5:2.

1 wastewater transmission, delivery and disposal among new service connections.¹² In
2 other words, HUFs allow growth to pay for growth. LPSCO currently has a Commission-
3 approved hook-up fee or HUF tariff applicable to sewer facilities. In this case, however,
4 the Company proposes a new form of HUF tariff for both water and sewer.

5 The new HUF tariff contains modifications relative to the Company's current form
6 of HUF, improvements intended to address issues and concerns that have arisen over time.
7 For example, the proposed HUF tariff contains language specifying that the funds must be
8 held in a separate interest bearing account and that the interest will accrue to the
9 account—the interest will increase the amount available for CIAC.¹³ Moreover, the
10 proposed HUF tariff contains a new lower tier to recognize the lesser impact new active-
11 adult communities have on the system.¹⁴ These additions are not in dispute.

12 The sole issue in dispute arises from RUCO's opposition to another tariff provision
13 that postpones rate base treatment of HUF funds until such time as they are actually spent
14 for plant.¹⁵ In Decision No. 72251 (April 7, 2011), the Commission approved this same
15 language in Liberty Water's HUF tariff for its Bella Vista water system, also over
16 RUCO's objection.¹⁶ In that case, Liberty Water proposed language that actually delayed
17 booking HUFs as contributions in aid of construction (CIAC) before such funds were
18 spent on plant and both RUCO and Staff objected. Liberty Water's proposal was intended
19 to defer rate base deductions for money sitting in a bank account, which is how most HUF
20

21
22 ¹² Sorensen Phase 2 Dt. at 3:22-26; Rigsby Phase 2 Dt. at 7:4-16.

23 ¹³ Sorensen Phase 2 Dt., Attachment 2 at Section IV(H) and Attachment 3 at Section IV(H).

24 ¹⁴ Tr. at 45:9-25; Sorensen Phase 2 Dt. at 5:7-15.

25 ¹⁵ As set forth above, the exact language in dispute is "The Company shall record amounts collected under
26 the tariff as CIAC; however, such amounts shall not be deducted from rate base until such amounts have
been expended for plant." Sorensen Phase 2 Dt., Attachment 2 at Section IV(B) and Attachment 3 at
Section IV(B).

¹⁶ Decision No. 72251 at 45:11 – 46:1.

1 tariffs approved by the Commission were treated for ratemaking.¹⁷ The gist of Staff's
2 concern was that such treatment could be considered inconsistent with NARUC's
3 definition of CIAC, which treatment is intended to ensure that utilities do not earn returns
4 on plant built with third-party funding.¹⁸ However, Staff recognized then, as does RUCO
5 now, that it is up to the Commission to decide how CIAC is treated for ratemaking.¹⁹
6 Then, during the Open Meeting, Staff offered a compromise—and the Commissioners
7 adopted that compromise and that Staff compromise is the language in dispute in this
8 case. Under this language, HUF funds are booked as CIAC when received; however, the
9 deduction from rate base will not occur until the funds are actually spent on plant²⁰ which
10 ensures that the matching principle is fully followed. But RUCO is still unhappy.²¹

11 Among other things, RUCO asserts that the funds should create an immediate
12 deduction from rate base because that's what the Commission has always done and there
13 is no reason to change.²² RUCO, however, ignores that much has changed—chiefly the
14 economy. Development, once the engine of Arizona's economy, has slowed dramatically.
15 As a result, utilities are more likely to be left with unexpended HUF funds sitting in the
16 bank, which the utility can't use waiting for growth to continue.

17 Sorensen Phase 2 Dt. at 5:16-23; Rigsby Phase 2 Dt. at 6:20 – 7:2.

18 LPSCO's Notice of Filing Late Filed Exhibit for Phase 2 (June 30, 2011) at Exhibit A.

19 *Id.*; Tr. at 106:17 – 107:16.

20 See Sorensen Phase 2 Rb. at 5:4-8; Sorensen Phase 2 Dt. at 5:18-20.

21 RUCO was still fighting the issue of whether HUFs are CIAC until its witness took the stand in phase two. In his prefiled testimony, Mr. Rigsby testified that RUCO's main concern with the proposed HUF in this case was the delay in recognition as CIAC. Rigsby Phase 2 Dt. at 6:16-20. Then, in opening comments, RUCO's counsel asserted that "RUCO strongly objects to the wording of the company's proposed HUF tariff language that provides the company shall not record amounts collected under this tariff as CIAC until such amounts have been expended for plant." Tr. at 9:10-14. Again, the tariff approved for Bella Vista and the ones proposed herein call for HUFs to be recorded as CIAC upon receipt (Sorensen Phase 2 Dt., Attachment 2 at Section IV(B) and Attachment 3 at Section IV(B)), as RUCO finally admitted. Tr. at 104:14-18.

22 Rigsby Phase 2 Dt. at 6:14 – 7:2; Tr. at 69:8 – 70:1, 74:17-21, 112:13-16.

1 Moreover, as Mr. Olea explained during the Bella Vista Open Meeting, it was
2 never intended that HUFs reduce rate base before the plant was built with those funds.
3 This makes sense given the matching principle, which, at a minimum, requires that plant
4 be built and booked in the plant account before it is deducted through the CIAC account.²³

5 Despite this, RUCO asserts that HUF funds should be deducted from rate base the
6 moment they are received because the Company still has “control” over the monies.²⁴
7 That so-called “control” is illusory. The bank account where the HUF funds are to be
8 held must be separated from all other Company accounts, it must bear interest that accrues
9 to the benefit of the account itself, and it can only be used for the purposes specified in the
10 tariff.²⁵ In other words, the utility has its name on someone else’s money until it spends it
11 on plant those persons need for new development. This isn’t “control,” it’s stewardship.
12 And it isn’t sufficient to justify canceling out used and useful rate base built and financed
13 with the Company’s own money to offset the developers’ money still sitting in the bank—
14 which is the practical effect of deducting CIAC before the plant funded with it is actually
15 in existence as an offset to the CIAC deduction.

16 To further its effort to defeat the proposed tariff, RUCO also asserts that the change
17 in the tariff will result in an overburdened Staff failing to catch cheaters.²⁶ Of course, this
18 problem exists with respect to enforcement of every tariff, including HUF tariffs that do
19 not contain the disputed language. Furthermore, in this case, LPSCO will be required to
20 make annual filings regarding its HUF that spell out the customers paying the HUF, the
21 amount paid, the location of the property involved in the HUF, the interest earned on the

22 ²³ Tr. at 74:6-21, 76:3-9. Under the matching principle, when plant funded with AIAC or CIAC is
23 disallowed, the plant is removed from both the plant account and the AIAC or CIAC account. *Id.* at
110:18 – 111:4.

24 ²⁴ *Id.* at 86:5 – 88:12, 112:19-21.

25 ²⁵ Sorensen Phase 2 Dt., Attachment 2 at Section IV(H) and Attachment 3 at Section IV(H); Tr. at 21:12-
21, 85:22 – 87:23.

26 ²⁶ Rigsby Phase 2 Dt. at 12:1-9; Tr. at 76:9-25.

1 HUF funds and a list of facilities built with HUFs.²⁷ Certainly, to the extent that Staff or
2 RUCO suspect misappropriation of tariff funds, or any other violation of a Commission-
3 approved tariff, those parties will have every opportunity to investigate in a rate case or
4 other proceeding.

5 In the meantime, LPSCO is not going to assume, as RUCO does, that the utilities
6 regulated by the Commission will ignore the requirements of Commission-imposed tariffs
7 in order to cheat their ratepayers.²⁸ The Commission should ignore RUCO's parade of
8 horrors argument. Liberty Water's compliance record and commitment to service speak
9 for themselves. So does the simple reasoning for the proposed tariff—don't deduct
10 restricted funds in a bank from rate base. That Mr. Rigsby resorted to chicken-little, 'end
11 of regulation as we know it' conspiracy theories merely speaks to RUCO's desperation to
12 salvage a one-sided deduction.²⁹ Theatrics aside, RUCO admitted that it is the
13 Commission that determines the public interest, and the Commission has already
14 determined that the disputed tariff language strikes a fair balance between the desire that
15 growth pay for growth and the need to ensure that utilities do not earn a return on
16 someone else's money. It should do so again in this case, again over RUCO's objection.

17
18 **PRAYER FOR RELIEF**

19 Based on the foregoing, LPSCO respectfully requests that the Commission
20 approve:

21 a. The surcharge mechanism proposed by LPSCO herein and supported by all
22 parties to allow the Company to recover over an estimated 18 months the forgone revenue

23
24 ²⁷ Sorensen Phase 2 Dt., Attachment 2 at Section IV(L) and Attachment 3 at Section IV(K) ; Tr. at 81:8-15.

25 ²⁸ Tr. at 81:15 – 82:23, 109:18-22, 124:4-17.

26 ²⁹ See *id.* at 84:15 – 85:18.

1 during the phase-in of rates in this docket, along with a just and reasonable carrying cost
2 of the WACC authorized in Phase 1 of this case; and

3 b. The form of HUF tariff for water and sewer proposed by LPSCO and
4 supported by Staff, Globe/Westcor and Pebble Creek; and

5 c. Such other and further relief as the Commission determines to be necessary
6 to implement the relief granted herein.

7 RESPECTFULLY SUBMITTED this 9th day of August, 2011.

8 FENNEMORE CRAIG, P.C.

9
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